

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)
)
 PLAINTIFF,) CASE NO. 10CR1805-JAH
)
 VS.) SAN DIEGO, CALIFORNIA
)
 DANIEL EDWARD CHOVAN,) TUESDAY,
) NOVEMBER 9, 2010
) 9:44 A.M.
 DEFENDANT.)
 _____)

TRANSCRIPT OF CHANGE OF PLEA HEARING
BEFORE THE HONORABLE NITA L. STORMES
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

FOR THE GOVERNMENT: CAROLINE PINEDA HAN
ASSISTANT U.S. ATTORNEY
880 FRONT STREET
SAN DIEGO, CALIFORNIA 92101

FOR THE DEFENDANT: FEDERAL DEFENDERS OF SAN DIEGO
BY: JOSHUA J. JONES, ESQ.
225 BROADWAY STREET
SUITE 900
SAN DIEGO, CALIFORNIA 92101

TRANSCRIPT ORDERED BY: FEDERAL DEFENDERS, INC.

TRANSCRIBER: CAMERON P. KIRCHER

PROCEEDINGS RECORDED BY ELECTRONIC SOUND RECORDING;
TRANSCRIPT PRODUCED BY TRANSCRIPTION.

1 SAN DIEGO, CALIFORNIA - TUESDAY, NOVEMBER 9, 2010

2 9:44 A.M.

3 THE CLERK: CALLING MATTER NO. 4 ON CALENDAR,
4 CASE NUMBER 10CR1805-JAH, THE UNITED STATES VERSUS
5 DANIEL EDWARD CHOVAN ON THE CALENDAR FOR A CHANGE OF PLEA
6 HEARING.

7 MR. JONES: GOOD MORNING, YOUR HONOR. JOSHUA JONES,
8 FEDERAL DEFENDERS, ON BEHALF OF MR. CHOVAN. HE'S PRESENT ON
9 BOND.

10 THE COURT: GOOD MORNING.

11 THE DEFENDANT: GOOD MORNING.

12 MS. HAN: GOOD MORNING, YOUR HONOR. CAROLINE HAN ON
13 BEHALF OF THE UNITED STATES.

14 THE COURT: GOOD MORNING.

15 ALL RIGHT. MR. PERRAULT, WOULD YOU PLEASE PLACE
16 MR. CHOVAN UNDER OATH.

17 THE CLERK: SIR, CAN YOU PLEASE RAISE YOUR RIGHT
18 HAND.

19 DANIEL EDWARD CHOVAN - DEFENDANT - SWORN

20 THE DEFENDANT: YES.

21 THE CLERK: YOU MAY PUT YOUR HAND DOWN.

22 THE COURT: MR. CHOVAN, HAVE YOU TAKEN ANY DRUGS OR
23 MEDICATIONS THAT WOULD INTERFERE WITH YOUR ABILITY TO
24 UNDERSTAND THE PROCEEDINGS THIS MORNING?

25 THE DEFENDANT: NO.

1 THE COURT: ALL RIGHT. YOU SIGNED A WRITTEN CONSENT
2 FORM INDICATING THAT YOU WISH TO ENTER A PLEA IN MY COURT
3 THIS MORNING AND THEN LATER BE SENTENCED BY A DIFFERENT
4 JUDGE.

5 IS THAT HOW YOU WISH TO PROCEED?

6 THE DEFENDANT: YES.

7 THE COURT: I'M NOW GOING TO ADVISE YOU OF YOUR
8 CONSTITUTIONAL RIGHTS.

9 YOU HAVE THE RIGHT TO PERSIST IN YOUR PLEA OF NOT
10 GUILTY. YOU HAVE THE RIGHT TO A SPEEDY AND PUBLIC TRIAL.
11 YOU HAVE THE RIGHT TO BE TRIED BY A JURY, OR YOU COULD GIVE
12 UP THAT RIGHT AND AGREE TO BE TRIED BY A JUDGE. YOU HAVE THE
13 RIGHT TO ASSISTANCE OF COUNSEL THROUGHOUT THE PROCEEDINGS,
14 INCLUDING AT TRIAL. IF YOU CANNOT AFFORD TO PAY AN ATTORNEY
15 TO REPRESENT YOU AT TRIAL, APPOINTED COUNSEL WILL REPRESENT
16 YOU THROUGHOUT THE TRIAL AT NO COST TO YOU.

17 YOU HAVE THE RIGHT TO CONFRONT AND CROSS-EXAMINE
18 WITNESSES WHO WOULD TESTIFY AGAINST YOU. YOU HAVE THE RIGHT
19 TO PRESENT A DEFENSE AND SUBPOENA WITNESSES TO COURT TO
20 TESTIFY ON YOUR BEHALF. YOU ALSO HAVE THE RIGHT AGAINST
21 COMPELLED SELF-INCRIMINATION, MEANING THAT YOU CANNOT BE
22 FORCED TO TESTIFY AT ANY HEARING OR AT TRIAL, AND THE
23 GOVERNMENT CANNOT COMMENT ON YOUR SILENCE.

24 DO YOU UNDERSTAND THE CONSTITUTIONAL RIGHTS THAT
25 I'VE JUST DESCRIBED TO YOU, SIR?

1 THE DEFENDANT: YES.

2 THE COURT: IF YOU PLEAD GUILTY TO THE CHARGE
3 AGAINST YOU, THERE WILL BE NO TRIAL, AND YOU WILL BE GIVING
4 UP THE CONSTITUTIONAL RIGHTS I JUST DESCRIBED, EXCEPT FOR THE
5 RIGHT TO CONTINUED ASSISTANCE OF COUNSEL.

6 DO YOU UNDERSTAND AND AGREE TO GIVE UP THOSE RIGHTS,
7 SIR?

8 THE DEFENDANT: YES.

9 THE COURT: ALL RIGHT. MR. CHOVAN, YOU ARE CHARGED
10 IN COUNT 1 OF THE INDICTMENT WITH BEING A PROHIBITED PERSON
11 IN POSSESSION OF A FIREARM ON APRIL 15, 2010.

12 IF YOU WERE TO GO TO TRIAL ON COUNT 1 OF THE
13 INDICTMENT, THE UNITED STATES WOULD HAVE TO PROVE BEYOND A
14 REASONABLE DOUBT THAT YOU WERE CONVICTED OF THE MISDEMEANOR
15 CRIME OF DOMESTIC VIOLENCE, THAT YOU THEREAFTER KNOWINGLY
16 POSSESSED A FIREARM, AND THAT POSSESSION WAS IN OR AFFECTING
17 INTERSTATE COMMERCE. IF YOU PLEAD GUILTY TO THE CHARGE,
18 YOU'LL BE ADMITTING EACH OF THE ELEMENTS OF THE CRIME.

19 DO YOU UNDERSTAND THAT, SIR?

20 THE DEFENDANT: YES.

21 THE COURT: ALL RIGHT. THE MAXIMUM PENALTIES
22 ASSOCIATED WITH THIS CHARGE ARE 10 YEARS IN PRISON, A
23 \$250,000 FINE, A \$100 SPECIAL ASSESSMENT, A SUPERVISED
24 RELEASE TERM OF AT LEAST THREE YEARS AND FORFEITURE OF ALL
25 FIREARMS AND AMMUNITION INVOLVED IN ANY KNOWING VIOLATION OF

1 TITLE 18, UNITED STATES CODE SECTION 922 OR TITLE 18 U.S.
2 CODE SECTION 924.

3 DO YOU UNDERSTAND THE MAXIMUM PENALTIES ASSOCIATED
4 WITH THE CHARGE AGAINST YOU, SIR?

5 THE DEFENDANT: YES.

6 THE COURT: AND YOU ALSO UNDERSTAND THAT IF YOU WERE
7 TO VIOLATE ANY CONDITION OF YOUR SUPERVISED RELEASE, THAT
8 RELEASE COULD BE REVOKED AND YOU COULD BE RETURNED TO PRISON
9 FOR A PERIOD UP TO THREE YEARS?

10 THE DEFENDANT: YES.

11 THE COURT: ARE YOU A UNITED STATES CITIZEN?

12 THE DEFENDANT: YES.

13 THE COURT: OKAY. THE PRECISE SENTENCE IN YOUR CASE
14 WILL BE DETERMINED BY THE DISTRICT JUDGE AFTER HE CONSULTS
15 THE SENTENCING GUIDELINES.

16 DID YOU HAVE AN OPPORTUNITY TO SPEAK WITH MR. JONES
17 ABOUT HOW THE SENTENCING GUIDELINES MIGHT APPLY TO YOU?

18 THE DEFENDANT: YES.

19 THE COURT: THE SENTENCING GUIDELINES ARE ADVISORY
20 ONLY, MEANING THAT THE SENTENCING JUDGE IS NOT REQUIRED TO
21 FOLLOW THEM. THEREFORE, HE COULD IMPOSE THE MAXIMUM PRISON
22 TERM IN YOUR CASE, WHICH IS TEN YEARS, EVEN IF THE GUIDELINES
23 ADVISE SOMETHING LESS THAN THAT.

24 DO YOU UNDERSTAND THAT, SIR?

25 THE DEFENDANT: YES.

1 THE COURT: YOU DO HAVE THE RIGHT TO APPEAL ANY
2 SENTENCE IMPOSED BY THE COURT, UNLESS YOU GIVE UP THAT RIGHT
3 AS PART OF A PLEA AGREEMENT WITH THE UNITED STATES
4 GOVERNMENT.

5 I HAVE BEEN HANDED A WRITTEN PLEA AGREEMENT IN YOUR
6 CASE, AND I WILL ASK COUNSEL WHETHER THIS 13-PAGE PLEA
7 AGREEMENT IS THE ENTIRE AGREEMENT BETWEEN THE PARTIES.

8 MR. JONES: IT IS, YOUR HONOR.

9 THE COURT: OKAY. MR. CHOVAN, THE INITIALS "D.C."
10 APPEAR ON EACH PAGE OF YOUR PLEA AGREEMENT. THOSE ARE YOUR
11 INITIALS, SIR?

12 THE DEFENDANT: YES, THEY ARE.

13 THE COURT: YOUR INITIALS SIGNIFY THAT YOU READ OR
14 HAD READ TO YOU THE ENTIRE PLEA AGREEMENT, DISCUSSED IT
15 THOROUGHLY WITH YOUR ATTORNEY AND UNDERSTOOD ALL OF IT?

16 THE DEFENDANT: YES.

17 THE COURT: AND THIS IS YOUR SIGNATURE ON THE LAST
18 PAGE OF THE PLEA AGREEMENT?

19 THE DEFENDANT: YES, YOUR HONOR.

20 THE COURT: ARE YOU SATISFIED WITH THE SERVICES OF
21 YOUR ATTORNEY?

22 THE DEFENDANT: YES, I AM.

23 THE COURT: DO YOU HAVE ANY QUESTIONS THAT YOU WANT
24 TO ASK THE COURT ABOUT THE TERMS OF YOUR WRITTEN PLEA
25 AGREEMENT?

1 THE DEFENDANT: NO.

2 THE COURT: ALL RIGHT. I DO WANT TO DISCUSS ONE
3 PROVISION. IT'S PARAGRAPH 11 OF YOUR PLEA AGREEMENT. IT'S
4 ENTITLED "DEFENDANT WAIVES APPEAL AND COLLATERAL ATTACK."

5 I WANT YOU TO UNDERSTAND THAT AS PART OF THIS PLEA
6 AGREEMENT, YOU ARE GIVING UP YOUR RIGHT TO APPEAL THE
7 CONVICTION OR SENTENCE TO A HIGHER COURT, UNLESS YOU WERE TO
8 RECEIVE A PRISON SENTENCE GREATER THAN THE HIGH END OF THE
9 GUIDELINE RANGE THAT'S RECOMMENDED BY THE GOVERNMENT AT THE
10 TIME OF SENTENCING.

11 IF THE SENTENCE YOU RECEIVE IS GREATER THAN THE HIGH
12 END OF THE GUIDELINE RANGE, THEN YOU CAN APPEAL. OTHERWISE,
13 YOU CANNOT.

14 MR. JONES: YOUR HONOR --

15 MS. HAN: YOUR HONOR, THERE IS AN ADDITIONAL
16 PROVISION IN THE WAIVER SECTION WHICH ALLOWS THE DEFENDANT TO
17 WAIVE -- I'M SORRY -- TO APPEAL THE DISTRICT COURT'S DECISION
18 DENYING HIS MOTION TO DISMISS COUNT 1 OF THE INDICTMENT.

19 THE COURT: OKAY. AND YOU UNDERSTAND YOU ALSO HAVE
20 THE RIGHT TO APPEAL THE DISTRICT JUDGE'S DECISION DENYING
21 YOUR MOTION TO DISMISS?

22 THE DEFENDANT: YES.

23 THE COURT: ALL RIGHT. YOU UNDERSTAND AND AGREE TO
24 THIS PROVISION, SIR?

25 THE DEFENDANT: YES.

1 THE COURT: HAS ANYBODY PROMISED YOU ANYTHING OTHER
2 THAN WHAT'S CONTAINED IN THIS PLEA AGREEMENT IN ORDER TO GET
3 YOU TO PLEAD GUILTY?

4 THE DEFENDANT: NO.

5 THE COURT: DID ANYBODY THREATEN YOU IN ORDER TO GET
6 YOU TO PLEAD GUILTY?

7 THE DEFENDANT: NO.

8 THE COURT: I'M GOING TO READ THE CHARGE TO YOU AND
9 ASK YOU HOW YOU PLEAD, AND THEN I'M GOING TO ASK SOME
10 QUESTIONS ABOUT THE FACTS THAT SUPPORT YOUR PLEA. AND I NEED
11 TO CAUTION YOU, IF YOU WERE TO GIVE A FALSE ANSWER TO ANY
12 QUESTION I ASK, YOU COULD LATER BE PROSECUTED FOR MAKING A
13 FALSE STATEMENT.

14 DO YOU UNDERSTAND THAT?

15 THE DEFENDANT: YES.

16 THE COURT: ALL RIGHT, SIR. YOU ARE CHARGED IN
17 COUNT 1 OF THE INDICTMENT WITH BEING A PROHIBITED PERSON IN
18 POSSESSION OF A FIREARM ON APRIL 15, 2010.

19 HOW DO YOU PLEAD TO THE CHARGE, SIR, ARE YOU GUILTY
20 OR NOT GUILTY?

21 THE DEFENDANT: GUILTY.

22 THE COURT: MR. CHOVAN, IS IT TRUE THAT ON OR ABOUT
23 AUGUST 15, 1996, YOU WERE CONVICTED OF INFLECTING CORPORAL
24 INJURY ON A SPOUSE, A MISDEMEANOR CRIME, IN VIOLATION OF THE
25 CALIFORNIA PENAL CODE IN SAN DIEGO COUNTY?

1 THE DEFENDANT: YES.

2 THE COURT: AND IS IT TRUE THAT ON OCTOBER 31, 2009,
3 YOU COMPLETED AN A.T.F. FORM AT WHOLESALE GUNS, WHICH IS A
4 LICENSED GUN DEALER IN SANTEE, CALIFORNIA, AND REPRESENTED AT
5 THAT TIME THAT YOU HAD NOT BEEN CONVICTED OF A MISDEMEANOR
6 CRIME OF DOMESTIC VIOLENCE, WHEREAS YOU HAD, IN FACT, BEEN
7 CONVICTED OF THAT CRIME ON AUGUST 15, 1996?

8 THE DEFENDANT: YES.

9 THE COURT: AND IS IT FURTHER TRUE THAT ON
10 APRIL 18 -- EXCUSE ME -- 15, 2010, WITHIN THE SOUTHERN
11 DISTRICT OF CALIFORNIA, YOU KNOWINGLY POSSESSED IN AND
12 AFFECTING INTERSTATE COMMERCE CERTAIN FIREARMS:

13 SPECIFICALLY A WINCHESTER 12-GAUGE SHOTGUN,
14 MANUFACTURED IN CANADA AND IMPORTED INTO THE UNITED STATES
15 THROUGH EITHER ILLINOIS OR CONNECTICUT; A SAVAGE
16 ARMS .22-CALIBER RIFLE, WHICH WAS MANUFACTURED IN EITHER
17 NEW YORK OR MASSACHUSETTS, AND A HIGH STANDARD MPG
18 .22-CALIBER HANDGUN THAT WAS MANUFACTURED IN CONNECTICUT,
19 WITH THE SERIAL NUMBERS AS RELATED IN PARAGRAPH 3 OF THE
20 FACTUAL BASIS OF YOUR PLEA AGREEMENT?

21 THE DEFENDANT: YES.

22 THE COURT: AND IS IT FURTHER TRUE THAT THESE
23 FIREARMS WERE ALL RECOVERED FROM YOUR HOME, WHICH IS LOCATED
24 AT 18582 BEE CANYON ROAD IN DULZURA, CALIFORNIA?

25 THE DEFENDANT: YES.

1 THE COURT: AND IS IT FURTHER TRUE THAT YOU
2 KNOWINGLY POSSESSED A BALDWIN & COMPANY LIMITED 20-GAUGE
3 SHOTGUN WITH 532 ROUNDS OF ASSORTED AMMUNITION?

4 THE DEFENDANT: YES.

5 THE COURT: IS THE ASSISTANT U.S. ATTORNEY SATISFIED
6 WITH THE FACTUAL BASIS?

7 MS. HAN: YES, YOUR HONOR. THANK YOU.

8 THE COURT: THEN, MR. PERRAULT, WOULD YOU PLEASE
9 REARRAIGN MR. CHOVAN ON COUNT 1.

10 THE CLERK: SIR, NOW THAT YOU HAVE BEEN ADVISED OF
11 YOUR RIGHTS, THE CHARGES AGAINST YOU AND THE POSSIBLE
12 SENTENCE, HOW DO YOU NOW PLEAD TO COUNT 1 OF THE INDICTMENT,
13 GUILTY OR NOT GUILTY?

14 THE DEFENDANT: GUILTY.

15 THE COURT: ALL RIGHT. THIS COURT FINDS THAT THE
16 DEFENDANT'S GUILTY PLEA IS MADE KNOWINGLY AND VOLUNTARILY AND
17 WITH A FULL UNDERSTANDING OF THE NATURE OF THE CHARGE, THE
18 DEFENDANT'S RIGHTS AND THE CONSEQUENCES OF THE PLEA, AND THAT
19 THERE IS A FACTUAL BASIS FOR THIS PLEA.

20 I WILL, THEREFORE, RECOMMEND THAT JUDGE HOUSTON
21 ACCEPT YOUR PLEA. AND I'M GOING TO SET YOUR SENTENCING
22 HEARING BEFORE JUDGE HOUSTON ON FEBRUARY 7, 2011, AT 8:30 IN
23 THE MORNING.

24 AND I WILL EXCLUDE TIME BETWEEN TODAY AND FEBRUARY 7
25 ON THE GROUND THAT JUDGE HOUSTON WILL BE CONSIDERING YOUR

1 TENDERED GUILTY PLEA.

2 ARE THERE ANY DATES THAT NEED TO BE VACATED?

3 MR. JONES: THERE IS A JURY TRIAL DATE SET, YOUR
4 HONOR.

5 THE COURT: ALL RIGHT. THAT DATE WILL BE VACATED.

6 THANK YOU VERY MUCH, SIR. THANK YOU, COUNSEL.

7 MR. JONES: THANKS, YOUR HONOR.

8 MS. HAN: THANK YOU, YOUR HONOR.

9 THE COURT: YOU'RE WELCOME.

10 THE CLERK: COURT WILL BE IN A BRIEF RECESS.

11 (PROCEEDINGS CONCLUDED AT 9:54 A.M.)

12 -- 00000 --

13 I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT
14 FROM THE ELECTRONIC SOUND RECORDING OF THE PROCEEDINGS IN THE
15 ABOVE-ENTITLED MATTER.

16
17 /S/CAMERON P. KIRCHER 4-7-11
18 TRANSCRIBER DATE
19
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25